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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER	
MADSEN, ROBERT A	

ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/929,674	ABLER, JOSEPH H.	
	Examiner	Art Unit	
	Robert Madsen	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 May 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *38-43,45 and 50-55* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *38-43,45 and 50-55* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. The Amendment filed May 4, 2004 has been entered. Claims 1-37, 44,46-49 have been cancelled. Claims 50-55 have been added. Claims 38-43, 45,50-55 are currently pending in the application.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claim 50 and 55 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Per the disclosure, applicant has defined a "cooling tank" (e.g. item 19) divided into "cooling cells"(e.g. items 31-34) , and the "cooling cells" are subdivided into "sections" (e.g. items 61 and 62) via an internal wall (e.g. item 63). However, claims 50 and 55 recite the different sections are formed by *dividing the tank into a plurality of cooling cells.* Based on the disclosure, different sections are formed by *dividing the cooling cells with an internal wall*, not dividing the tank into cooling cells.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

6. It is noted that Nelles teaches sections "arranged horizontally with respect to each other" in two ways. First, Nelles teaches "sections" of the tank formed by items 36 , which receive each rack 15 (See Figure 3), are horizontal with respect to one another. Second, the "sections" compartments 97 formed by the shelving structure 64/67 are also arranged horizontally with respect to one another. This office action will address both interpretations in light of the amended claims.

7. Claims 38,39, 41-43,45,50,51 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelles (US 4815368).

8. Regarding claim 38,39,41-43,45,50, Nelles teaches placing cheese blocks sequentially into different sections of a tank (e.g. each section defined as the space between stanchions 36 that are arranged horizontally to one another) using an inlet flume, and the cold brine flows from the bottom of the tank vertically (i.e. contacting the aforementioned submerged rack first, followed by the aforementioned partially submerged rack of Figure 3), as recited in claim 38 and 39, and (See abstract, Figures Column 3, line 45 to Column 4, line 3, Column 5, line 63 to Column 6, line7, and Column 8, line 14-62). Nelles further teaches the sections defined by items 36 are also formed by walls (i.e. items 67 in Figure 6) into a plurality of cooling cells (i.e. shelves 64

of Figure 6 or compartments 97) as recited in claim 50, the cooling cells are arranged horizontally , the blocks held in cells at the bottom of each rack have been in the tank for the longest period of time (i.e. lower compartments of each section) ,and the cold brine flows from the bottom of the tank vertically through each rack (i.e. contacting the lowest shelves/cells first) sequentially transferred from selected cells (i.e. beginning with the bottom of each rack, which has been in the tank for the longest time) to the cells immediately above, which have been in the tank for the next longest period of time and are not as cold as the previous, with the lowest cell being the coldest, as recited in claims 42 and 43.

9. Regarding claim 41, Nelles teaches the brine passes vertically through each rack and the upper level of brine is removed from the tank, and thus removed from the blocks that have been in the tank the least amount of time are those in the partially submerged rack at the top of the brine tank (see column 9, lines 25-47).

10. Regarding claims 51 and 52, at least some of the cheese is completely submerged (See Figure 3).

11. Claims 38-43,45,50-55 are rejected under 35 U.S.C. 102(b) as being anticipated by Nelles (US 4815368) evidenced by Woods (US 3719407).

12. Amended claim 38 differs from the previously presented claim 38 only in the recitation that the sections "are arranged horizontally with respect to on another" and "while cheese blocks are confined within each section of the tank". It is noted that the sections as cited in the previous Office Action (i.e. the shelves) are arranged

horizontally with respect to one another, as evidenced by Woods. Woods teaches shelves that are substantially horizontal with respect to the floor (Column 2, lines 60-67), and thus one of ordinary skill in the art would recognize that the shelves of Nelles are also arranged horizontally with respect to the floor and each other.

13. Regarding claim 38-40,42,43,50-55, Nelles teaches placing cheese blocks sequentially into different sections of a tank (e.g. shelves 63 in Figures), which are formed by dividing the tank into a plurality of cooling cells via walls (e.g. shelves 63 include walls 67 and 64 which form compartments 97) as recited in claims 50 and 55, using an inlet flume, wherein cheese blocks are confined in each section via the walls 67 and are loaded section-by-section, or cell-by-cell (beginning with the lowest shelf) of each rack such that the blocks that have been in the tank for the longest period of time, and are thus the coldest as recited in claim 43, are those on the lowest sections/cells and the cold brine flows from the bottom of the tank vertically through each rack (i.e. contacting the lowest shelves first), as recited in claim 38 and 39 (See abstract, Figures Column 3, line 45 to Column 4, line 3, Column 5, line 63 to Column 6, line7, and Column 8, line 14-62). Since the cold brine is first introduced to the sections /cells that have been in the tank for the longest time (i.e. at the bottom of the tank) and is forced to flow upward through each rack, the brine is sequentially transferred from selected sections/ cells (i.e. beginning with the bottom of each rack, which has been in the tank for the longest time) to the sections/cells immediately above, which have been in the tank for the next longest period of time and are not as cold as the previous, as recited in

claims 40, 42, and 54 wherein at least some of the cheese blocks entirely submerged as recited in claims 51-53.

14. Regarding claim 41, Nelles teaches the brine passes vertically through each rack and the upper level of brine is removed from the tank, and thus removed from the blocks that have been in the tank the least amount of time are in shelves, or cells, since those are located top of the tank of the brine (see column 9, lines 25-47).

15. Regarding claim 45, Nelles teaches the brine is chilled before entering the tank (Column 5, line 57 to Column 6, line 7).

Response to Arguments

16. Applicant's arguments with respect to Johnson have been fully considered and are persuasive. The rejection of claim 38 under 35 U.S.C. 102(b) as being clearly anticipated by Johnson (US 5018440) has been withdrawn.

17. Applicant's arguments with respect to Nelles have been fully considered but they are not persuasive, for the reasons set forth in the rejections made above and discussed further below.

18. In particular applicant argues that Nelles does not teach the flow of liquid through the tank based on the amount of time that the cheese has been in each section. However, Nelles not only teaches introducing cooling brine from the bottom of the tank, where the cheese blocks have remained in the tank the longest, but Nelles emphasizes the brine is injected "with sufficient force to over come the tendency of the cooler fluid to remain at the bottom. This forces the cooler brine 99 to flow upward through the cages

15, surrounding the blocks of cheese 100 held in the cages 15..." . Therefore, Nelles not only teaches introducing the brine at the location of the coolest cheese blocks, but Nelles emphasizes the importance of forcing the cooling liquid from the bottom of the tank to the top of the tank, which would inherently result in a sequential movement from the shelves holding the coolest cheese blocks at the bottom of a cage to the shelves holding the warmest cheese blocks at the top of a cage. Nelles clearly meets the limitation of "continuing to transfer liquid sequentially in to other sections of the tank by successively transferring the liquid from a section by that contains cheese blocks which have been in the tank for a lesser amount of time than a section which receives the liquid" as recited in the claims.

19. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a plurality of control valves and pumps for proper direction of liquid flow) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a). A shortened statutory period for reply to this final action is set to expire

THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

22. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

23. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
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Art Unit 1761

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